

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHNNY L. D.,¹
Plaintiff,

Case No. 1:20-cv-405
Litkovitz, M.J.

vs.

COMMISSIONER OF
SOCIAL SECURITY,
Defendant.

ORDER

This matter is before the Court on plaintiff's counsel's Motion for Approval of Attorney's Fee pursuant to 42 U.S.C. § 406(b). (Doc. 25). Attached to counsel's motion are a copy of his fee contract—executed by plaintiff (Doc. 25-1), his affidavit and itemization in support of the fee requested (Doc. 25-2), the supporting affidavit of another attorney (Doc. 25-3), and the administrative order remanding plaintiff's case to an Administrative Law Judge (ALJ) (Doc. 25-4).

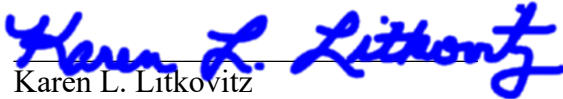
In his memorandum, counsel explains that plaintiff retained a different attorney to file a new disability claim while the disability claim that is the subject of the above-captioned appeal was pending. When the Appeals Council remanded the latter claim to the ALJ consistent with this Court's Order (Doc. 23), it ordered the ALJ to consolidate the claims. (*See* Doc. 25-4). Counsel learned that the remand hearing was to be held July 13, 2022 but did not receive notice or attend. Counsel requested a copy of the ultimate decision and, if applicable, award letter from the ALJ, plaintiff's new attorney, and opposing counsel in the above-captioned case but did not receive the documentation.

¹ Pursuant to General Order 22-01, due to significant privacy concerns in social security cases, any opinion, order, judgment or other disposition in social security cases in the Southern District of Ohio shall refer to plaintiffs only by their first names and last initials.

The Court therefore issued an Order directing the Commissioner to file a status report on the administrative proceedings for plaintiff's consolidated claims. (Doc. 26). The Commissioner's status report explains that while plaintiff was determined to be disabled as of January 2019, and that decision is final, plaintiff's benefits have yet to be determined by the Agency. (Doc. 28).

Given the foregoing, plaintiff's counsel's fee motion (Doc. 25) is **DENIED** as premature, subject to reconsideration upon the final determination of plaintiff's benefits by the Agency. The Commissioner **ORDERED** to file a status report within **seven days** of such final determination and attach the award notice.

Date: 1/31/2023


Karen L. Litkovitz
United States Magistrate Judge